



Judicial approaches in protection of environment and environmental degradation in India

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Abstract

Environmental degradation is one of the largest threats to the all world living beings. Many countries and most of the organization have paid attention towards environment protection. But day by day surrounding environments being damaged and degrading due to using ample of natural sources. It affects our life in several ways. Therefore, it is our duty to protect environment, the environmental protection is need of day. Environmental degradation is deterioration of environment through depletion of resources such as water, air and soil; the destruction of ecosystems and the extinction of wildlife. Today we witness ecological imbalance, degrading environment, depredated earth, traumatic subversion of the eco-system, poisoning of air, water, food, and technological plunder of resources of nature. To meet these challenges to mankind various measures have been adopted in India. Indian judiciary is said to be the first to show greater concern and due attention to the protection of environment from various pollinations. A perusal of the thought provoking decisions of various High Court's as well as the Supreme Court speaks volumes about the significant role played by the judiciary has opened new aspirations in the arena of environmental protection. Through its activist approach took initiative in protection of environment.

Keywords: environmental degradation, judicial activism, role of the judiciary, protection of environment, environmental pollution

Introduction

Protection of environment is an increasing issue all over the world. Many countries and most of the organization have paid attention towards environment protection. World 'Environment Day' is celebrated every year on 5th June science 1973 to raise the global awareness regarding the environment, but day by day surrounding environments being damaged and degrading due to using ample of natural sources. Environmental degradation means man caused damages to the basic resources such as water, air, land, forests, the atmosphere etc., which are necessary for survival. It is also observed that, environmental degradation means overall lowering of environmental qualities because of adverse change brought in by human activities in the basic structure of components of the environment so much an extent that these adverse changes adversely affect all biological communities in general and human society in particular. Tremendous use of science and technologies have given birth too many problems of the environmental protections. Healthy environment is need of everyone. It affects our life in several ways. Therefore, it is our duty to protect environment, the environmental protection is need of day. Today we witness ecological imbalance, degrading environment, depredated earth, traumatic subversion of the eco-system, poisoning of air, water, food, and technological plunder of resources of nature. The global community including India facing problems like global warming, cyclones, earthquake, tsunami, flood, draught, and what not. Air, water, land pollution, and radiation have leads to the contamination of food with chemicals, which leads to causes serious diseases to living beings. Therefore, protection of environment will not be neglected at the cost of human life and loss of living being from the earth. To meet these

challenges to mankind various measures have been adopted in India. The development of the environmental jurisprudence in India through the innovative judicial decisions of the Supreme Court and High Courts is probably great inspiration to protection of environment. Judiciary played significant role it has opened new aspirations in the arena of environmental protection. This paper attempted to understand different dimensions of environmental degradation in India. The researcher in the present paper, focus on concept of environmental degradation, causes of environmental degradation, to protect the environment through judicial approaches.

Methodology

The researcher methodology used for the present research article doctrinal research method. As most of the information can be sought from the available literature, so the researcher has chosen doctrinal method as method of research for the present article and has used books, laws, case laws, journals, research articles for preparation of the same.

Objectives of the Study

The main objectives of the research work are:

1. To study the concept of environmental degradation in detail
2. To analyze the legislative measures in protection of environment
3. To find out judicial approaches about protection of environment
4. To study role of judiciary in implementation of environmental administration in India

Concept of Environment and Environmental Degradation

Every country has full of right to utilize its natural resources. India has also having ample of natural resources. A natural resource plays an important role for development of the nation. Environment includes water, air, land and the inter relationship which exist among and between water, air, land human beings, other living creatures, plants, micro-organisms and property. The concept of environment cannot be defined precisely. Environment means sum total of all conditions and influences that affects the development of life of all organisms [1]. Environment includes water, air and land and interrelationship which exist among.

Environmental degradation means to erosion and decline of the quality of the natural environment. It is caused directly or indirectly by anthropogenic activities that extract various environmental resources at a faster rate than they are replaced, and thus depleting them. On this regard, degradation means damage or reduction in quality of environmental features, primarily influenced by human activities.

Environmental degradation means man caused damages to the basic resources such as water, air, land, forests, the atmosphere etc., which are necessary for survival. It is also observed that, environmental degradation means overall lowering of environmental qualities because of adverse change brought in by human activities in the basic structure of components of the environment so much an extent that these adverse changes adversely affect all biological communities in general and human society in particular. It means introduction of any solid, liquid or gaseous substance present in such concentration as may be or tend to be injurious to environment. In other words it can be also stated as the unfavorable alteration of our surroundings. The environmental degradation caused due to industrialization, urbanization and due to natural calamities also. It is very derogatory for human life and all living beings.

Environmental degradation is deterioration of environment through depletion of resources such as water, air and soil; the destruction of ecosystems and the extinction of wildlife. It is the disintegration of the earth or deterioration of the Environment and the eradication of wildlife. Environmental degradation is one of the largest threats to the all-world living beings.

Causes of Environmental Degradation

Following some major causes of environmental degradation –

Deforestation

Deforestation means the cutting or removal of a forest or stand of trees where the land is thereafter converted to a non forest for urban use. Deforestation occurs for multiple reasons trees are cut down to be used for building or sold as fuel sometimes in the form of charcoal or timber etc. The removal of trees without sufficient reforestation has resulted in irreparable loss of ecosystem due to these causes environmental degradation took place. Forest are invaluable property of a nation because they provide raw materials to modern industries, timber for building purposes, habitats for numerous types of animals and number of organisms. It provides firewood to millions of people, food and shelter to human and animal beings. Therefore, forests are life line of a nation because prosperity

and welfare of the society directly depends on sound and healthy forest cover of nation concerned.

Urbanizations

Urbanization refers to the growth of towns and cities, often at the expense of rural areas, as people move to urban centers in search of jobs and what they hope will be a better life. In most countries the percentage of the total population living in urban areas is increasing. Transformation of population from rural areas and origin of few urban areas due to industrial development are responsible for environmental degradation and pollution. The accumulation of wealth and availability of more job opportunities in urban areas and greed or living in metropolitans cities, most of the population attracted towards urban areas, but in fact increasing urbanization means increase population in a limited space which results in the increase of buildings, roads, streets, drainages, vehicles number of factories urban wastes, smokes, dust etc., which causes several and sever environmental degradation.

Industrialization

It means, process by which an economy is transformed from primarily agricultural to one based on the manufacturing of goods. Individual manual labor is often replaced by mechanized mass production, and craftsmen are replaced by assembly lines. It is also observed that, rapidly industrial development has given economic prosperity to human society, but due to this number of environmental problems arises. Exploitation of natural resources in order to meet the industrial demand to raw materials has resulted in to the environmental degradation took place, e.g. cutting of trees, using huge form of raw material fuels, industrial wastages materials through in to the river etc. which causes environmental pollutions.

Technology

The present era is called as technological era, it consists of two primary components first a physical component which comprises of items such as products, tooling, equipments, blueprints, techniques, and processes; and second the informational component which consists of know-how in management, marketing, production, quality control, reliability, skilled labor and functional areas. It is observed that, more economic and industrial development than more danger to the environment. Man in the technology world having quest for better quality of life and material comforts but these leads to exfoliating and indiscriminately consuming natural resources at their command, due to lack of environment friendly technology affects on environmental degradation.

Population

Human population explosion is the biggest problem for our nation. It is alarming rate is the most significant of the lowering of environmental quality and ecological balance. Increasing in population means more exploitation of natural resources. This leads to new environmental problems. The increase in the population growth it puts a heavy demand on the natural resources like water, air, soil, forest, raw materials etc. However, there is direct relationship between increase in

population numbers and environmental impact. More people require more food, buildings, land and energy etc., due to this causes environmental degradation.

Agriculture

Agriculture plays an essential role in the process of economic development of less developed countries like India. Besides providing food to nation, agriculture releases labour, provides saving, contributes to market of industrial goods and earns foreign exchange. Agricultural development is an integral part of overall economic development. The agriculture development means increase agricultural productivity, it is due to development of modern technique, advanced technology, use of chemical fertilizers, and variety of seeds etc. due to agriculture development degrade the variety of environmental factors like excessive use of pesticides and chemical fertilizers environmental problems arises in country.

Legislative Protecting Measures

Various laws has been framed in India for the protection of environment and some of them are cited as

Constitutional Aspects of Environmental Law

Environmental protection has found a special mention in the Indian Constitution. The Constitution being the fundamental law of the land has a binding on the citizens, non citizens as well as the state to protect and improve the environment. Article 14 of the constitution state that 'state shall not deny to any person equality before the law or equal protection of laws with in the territory of India' thus it can be used as a potent weapon against decisions threatening the environment. Right to carry on any occupation, trade and business or practice any profession whether a person, carrying business or industry or trade in a manner which is causing an injury to the public and posing health hazard to the society at large it amounts violation law ^[2].

Part III of the Constitution of India incorporates fundamental rights which have been made judicially enforceable; an attempt here is being made to examine this perspective in the context of environmental protection. The Right to a wholesome Environment has been laid down by the Supreme Court in *Maneka Gandhi case* ^[3] that if law is enacted by a legislature which touches upon the life and liberty of a person then it is mandatory requirement that the procedure established by it for curtailing the liberty of a person must be reasonable fair and just. Environmental pollution which spoils the atmosphere and thereby affects the life and health of the person has been regarded as amounting to violation of Article 21 of the constitution.

Environmental pollution may be considered public or private nuisance public nuisance causes environmental pollution those who found guilty found of nuisance and causing injury, damages danger or annoyance to public liable to punishment under Indian Penal Code ^[4]. Spreading of infectious diseases dangerous to the life shall be punished; such act will also lead to environmental pollution in the form of public ill-health ^[5]. A person who voluntarily vitiates the atmosphere in any place so as to make it noxious to the health, liable for punishment under Penal code ^[6] Under section 277 of Indian Penal Code 1860, a person who voluntarily corrupts or fouls the water of

any public spring or reservoir shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to Rs 500 or with both.

The Code of Criminal Procedure, 1973 deals with maintenance of public order and tranquility has some relevance to the procedural aspects of the offences governed by I P C which in turn may have relevance to the subject of environmental pollution. Section 133, 134, 135 137 138, 139 of Code deals with the procedure about preventive powers has been given to the court. Some other relevant provisions using court may issue order against the pollutant for preventing environmental pollution.

Under the Law of Torts, special damage can be claimed from nuisance maker or violator of environment, The Environment (Protection) Act, 1986, The Water(Prevention and Control of Pollution) Act 1974, The Air (Prevention and Control of Pollution) Act 1981, The Hazardous wastes (Management and Handling) Rule 1989

The Indian Forest Act, 1927

This Act to consolidate the law relating to forests the transit of forest produce and the duty livable on timber and other forest produce. Created various categories of forests for different management and regulatory regimes

Forest Conservation Act, 1980 Amended, 1988

This Act provide for conservation of forests and for matters connected therewith or ancillary or incidental thereto.

The Water (Prevention and Control of Pollution) Act 1974 Amended 1988

This Act provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water

The forest Policy, 1988

The policy that emphasizes the twin objectives of ecological stability and social justice, highlighting the need for stronger conservation measures, it points to symbiotic relationship between tribles and other poor people and forests. It recommends treating local needs as the first charge on forest produce, and creates space for the participation of forest dependent communities in the management of forests.

Judicial Approaches

Indian judiciary is said to be the first to show greater concern and due attention to the protection of environment against the environmental degradation in India. A perusal of the thought provoking decisions of various High Court's as well as the Supreme Court speaks volumes about the significant role played by the judiciary has opened new aspirations in the arena of environmental protection. Through its activist approach took initiative in development of environmental Jurisprudence.

In case of *Indian Council for Envio-Legal Action v. Union of India* ^[7] Supreme Court interveded and found that the private industrial houses were flouting the provisions of law and accordingly held that the right to life as guaranteed under Article 21 of the Constitutional Law was invaded and seriously infringement by the Private industrial houses. *B. I.*

Wadhwa v. Union of India ^[8] this case related to non-performance of mandatory duties of Municipal Corporation, like garbage clearance, scavenging, and cleaning *Delhi* city. Supreme Court held that, non availability of funds; machinery etc. cannot be pleaded as non-performance of statutory obligation. Directions issued to scavenge and clean *Delhi* city every day and also appoint Municipal Magistrates for trial of offence under Corporation Act.

M. C Mehta v. Union of India ^[9] the Supreme Court treated the right to live in pollution free environment as a part of fundamental right to life Under Article 21 of the Indian Constitution. Also A. P. High Court in *T. Damodar Rao v. S. O. Municipal Corporation, Hyderabad* ^[10] laid down that right to live in healthy environment was specifically declared to be part of Article 21 of the Constitution. In *Ratlam Municipal Corporation v. Vardihchand* ^[11] Supreme Court made the use of dormant provisions of code of criminal procedure 1973 as a potent instrument for resolving pollution problems and for the enforcement of statutory duty. In the *R.L. & E. Kendra and Others v. State of U P* ^[12] (Popularly known as *Dehradun Quarrying Case*) the Supreme Court complained about the illegal / unauthorized mining in the Missouri, *Dehradun* belt. As a result the ecology of the surrounding area was adversely affected and it leads to the environmental disorder. The Supreme Court treated the letter as a writ petition under Article 32 of the Constitution and directed to stop the excavation (illegal mining).

In *M. C Mehta v. Kamal Nath* ^[13] the court held that as a trustee of all natural resources was under a legal duty to protect them, and that the resources were meant for public use and could not be transferred to private ownership. The most remarkable contributions of Judiciary have been adoption of sustainable development as a hardcore of environment in India. *M. C Mehta v. Union of India* ^[14] while taking note of the disastrous effects that the emissions from the Mathura Oil Refinery had on the *Taj Mahal* Supreme Court applied the principle of sustainable development to the case and apart from passing various directions stepped in to execute and supervise the resultant actions. In *Vellore Citizen's Welfare Forum v. Union of India* ^[15] the Court held that, precautionary principle and the polluter pays principle are part of environmental law of the country.

Conclusion

Environmental degradation is one of the largest threats to the all world living beings. There is abundantly use of science and technologies have given birth too many problems of the environmental protections. It impacts our life in several ways. Environmental degradation is deterioration of environment through depletion of resources such as water, air and soil; the destruction of ecosystems and the extinction of wildlife. It is the disintegration of the earth or deterioration of the Environment and the eradication of wildlife. Therefore, protection of environment will not be neglected at the cost of human life and loss of living being from the earth. To meet these challenges to mankind various measures have been adopted in India. The development of the environmental jurisprudence in India through the innovative judicial decisions of the Supreme Court and High Courts is probably great inspiration to protection of environment.

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